

**From:** Boyd, Andrew  
**Sent time:** 02/08/2016 08:08:16 AM  
**To:** Connery, Shannon  
**Subject:** FW: Revised Third Party Beneficiary Agreement / FMC FOIA  
**Attachments:** Third Party Beneficiary Agreement-1 v2.docx

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**From:** Maureen Mitchell [mailto:maureenm@SummitLaw.com]  
**Sent:** Friday, February 05, 2016 11:09 AM  
**To:** Boyd, Andrew <Boyd.Andrew@epa.gov>  
**Cc:** David Heineck <davidh@SummitLaw.com>  
**Subject:** Revised Third Party Beneficiary Agreement

Andy,

I understand from Andy Brown and Brian Bell that you spoke about some revisions to the draft Third Party Beneficiary Agreement. Their comments on the document have been reviewed by both Valley and FMC and we are in agreement with them. Most of the revisions are intended to update the document to reflect the prior execution of the Air Rights Lease Agreement and Easement Agreement. With respect to the language in paragraph 2 relating to EPA's status as a trustee to the Shoshone-Bannock Tribes, this has been placed into parentheses.

Please let me know if EPA is agreeable to these revisions. We will then proceed with executing the approved Agreement and deliver a signed copy to EPA.

Thanks,  
Maureen

 **Maureen Mitchell** · Partner

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**DRAFT FOR DISCUSSION PURPOSES ONLY**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

IN THE MATTER OF:

U.S. EPA Region 10  
Docket No. CERCLA-10-2103-0116

FMC Operable Unit of the Eastern  
Michaud Flats Superfund Site

FMC Corporation,

Respondent.

Proceedings under Section 106(a)  
and 122(b)(3) of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, 42 U.S.C. §§ 9606(a) and  
9622(b)(3).

**AGREEMENT AND FIRST MODIFICATION TO ADMINISTRATIVE ORDER  
REGARDING RESPONSE COST PAYMENTS TO BE PLACED IN SPECIAL  
ACCOUNT**

1. The U.S. Environmental Protection Agency (EPA) issued Unilateral Administrative Order for Remedial Design and Remedial Action, EPA Docket No. CERCLA-10-2103-0116 (Order), to FMC Corporation as the Respondent on June 10, 2013 for FMC Operable Unit of the Eastern Michaud Flats Superfund Site (Site).
2. By letter of June 20, 2013, Respondent provided its notice of intent to comply with the Order. Respondent has been performing the Remedial Design and Remedial Action work for the FMC Operable Unit.
3. The Order provided in Section XXII on "Payment of Response Costs" that Respondent "shall pay EPA all Response Costs incurred or to be incurred in connection with this Order, including the costs that EPA incurs overseeing Respondent's implementation of the Order.
4. The Respondent agrees to pay EPA all Response Costs, as defined in Section XXII of the Order, to be incurred in connection with the Order. The EPA and the

Respondent agree that all EPA response costs paid by Respondent from the date of this Agreement forward, may be deposited by the EPA in the Eastern Michaud Flats Superfund Site/FMC Operable Unit Special Account 105X to be retained and used to conduct or finance response action at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. The Respondent is advised that violation of Paragraph 4 may subject it to civil penalties as provided in sections 109 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

**Commented [A1]:** May strike to get agreement if respondent objects

6. The scope of this Agreement is limited to the matters addressed above. All provisions of the Order remain in full force and effect to the extent not superseded by the limited terms of this Agreement. Beyond the terms of this Agreement, nothing herein changes Respondent's statements in its June 20, 2013 letter of intent, and Respondent reserves all of its rights and defenses with regard to the Order.

So Agreed and Ordered, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
EPA/ ECL Office Director

And Agreed to by:

\_\_\_\_\_  
FMC Corporation Authorized Official